

**To the Honorable Council
City of Norfolk, Virginia**

March 15, 2016

From: Jared Chalk, Assistant Director of Development

Subject: An ordinance authorizing the City of Norfolk to enter into a performance agreement with the EDA and ADP, LLC in order to facilitate a grant from the Commonwealth Opportunity Fund

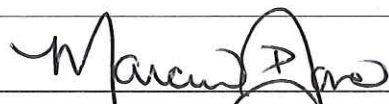
Reviewed:



Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6

Approved:



Marcus D. Jones, City Manager

Item Number:

R-11

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** ADP, LLC.

III. **Description:**

This agenda item is an ordinance to authorize the City of Norfolk (the "city") to enter into a performance agreement with the Economic Development Authority (the "EDA") of the City of Norfolk and ADP, LLC ("ADP") in order to facilitate a grant from the Commonwealth Opportunity Fund.

IV. **Analysis**

ADP, a leading global provider of human capital management solutions, is considering the relocation of a significant number of professional service jobs. The City expects to receive \$5 million from the Commonwealth Opportunity Fund ("COF Grant") through the Virginia Economic Development Partnership. This grant will be paid to the EDA with the expectation that the EDA will provide the funds to ADP.

V. **Financial Impact**

ADP will provide a capital investment of approximately \$32.5 million which will provide for the equipping, improving and operating of an office and operations facility in the city. ADP will also create at least 1,800 new jobs in Downtown Norfolk. This COF Grant will be matched with a local performance based grant from the City. Funds for the performance based grant will be generated by the tax revenues from ADP's operations in Norfolk.

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Economic Development Authority, the Department of Development and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Performance Agreement

3/2/2016mr

Form and Correctness Approved:

By [Signature]
Office of the City Attorney

Contents Approved:

By [Signature]
DEPT. of Development

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

\$ 5,000,000.00 221529149 9149
[Signature] Account
Director of Finance Date 3/10/16

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY OF NORFOLK TO ENTER INTO A PERFORMANCE AGREEMENT WITH THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK AND ADP, LLC.

- - -

WHEREAS, the City of Norfolk (the "City") expects to receive \$5,000,000.00 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing ADP, LLC (the "Company") to equip, improve and operate an office and operations facility in the City (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are defined in the Performance Agreement attached hereto; and

WHEREAS, the City is willing to provide the COF Grant funds to the Economic Development Authority of the City of Norfolk (the "Authority") with the expectation that the Authority will provide the funds to the Company, provided that

the Company promises to meet certain criteria relating to Capital Investment and New Jobs; and

WHEREAS, the City, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation and Maintenance; and

WHEREAS, as a condition to the COF Grant, the City is required to make a local match equal in value to the COF Grant; and

WHEREAS, the City has agreed to make the required local match via a grant from the Authority to the Company pursuant to that certain Cooperation Agreement approved by Council by Ordinance No. 46,219 on February 23, 2016 and reduced parking rates as set forth in that certain Parking Agreement approved by Council by Ordinance No. 46,254 on February 23, 2016; and

WHEREAS, the Company has stated that the capital improvements to the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$32,250,000.00; and

WHEREAS, the Company has stated that the capital improvements to the Facility will further entail the creation and Maintenance of 1,800 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Performance Agreement between ADP, LLC, the Economic Development Authority of the City of Norfolk, and the City of Norfolk, a copy of which is attached hereto, wherein the City of Norfolk agrees to the terms and conditions of the payout of the COF Grant, the use of the COF Grant proceeds, and the obligations of ADP, LLC, regarding Capital Investment and New Job creation, as such terms are defined in the Performance Agreement, is hereby approved.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Performance Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Performance Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect as of the date of its adoption.

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of March, 2016, by and among the **CITY OF NORFOLK, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **ADP, LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$5,000,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to equip, improve and operate an office and operations facility in the Locality (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the Locality has agreed to provide \$5,000,000 to the Company as its required matching incentive, pursuant to the terms of that certain Grant Agreement, dated February __, 2016, between the Authority and the Company;

WHEREAS, the Locality has purchased a parking garage in close proximity to the Facility and will provide below market-rate parking to the owner of the Facility so that the savings may be passed through to the Company under the Company's lease for the Facility (the "Lease"), thereby providing the Company with an additional incentive to induce the Company to equip, improve and operate the Facility;

WHEREAS, the equipping, improvement and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$32,250,000, of which approximately \$10,320,000 will be invested in furniture, fixtures and equipment, and approximately \$21,930,000 will be invested in the renovation and up-fit of the building;

WHEREAS, the equipping, improvement and operation of the Facility will further entail the creation and Maintenance of 1,800 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The Capital Investment must be in addition to the capital improvements at the Facility as of January 1, 2016. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment. The Locality and the Authority each hereby acknowledge that although the term of the Lease is at least ten years in length, the Company has an option (the “Termination Option”) under the Lease to terminate the Lease after seven years. The Locality and the Authority each hereby represent and agree that neither the existence of the Termination Option nor the Company’s exercise of the Termination Option (to the extent it is exercised) prevent the Lease from qualifying as “an operating lease having a term of at least ten years”, as such phrase is used herein.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) standard turnover of the employees occupying said positions, (ii) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (iii) strikes and (iv) other temporary work stoppages.

“New Job” means new permanent full-time employment, provided by the Company or its affiliates or subsidiaries, of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company or its affiliates or subsidiaries for the employee. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48

weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Performance Date” means December 31, 2021. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Targets” means the Company’s obligations, as of the Performance Date, to make Capital Investments at the Facility of at least \$32,250,000 and to create and Maintain at least 1,800 New Jobs at the Facility, 50 of which New Jobs will have an average annual wage of at least \$50,693 and 1,750 of which will have an average annual wage of at least \$36,000.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

On or prior to the Performance Date, the Company will equip, improve and operate the Facility in the Locality, make a Capital Investment of at least \$32,250,000, and create and Maintain at least 1,800 New Jobs at the Facility, 50 of which New Jobs will have an average annual wage of at least \$50,693 and 1,750 of which will have an average annual wage of at least \$36,000.

The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

For information purposes only, the Locality and the Authority hereby state the following: (i) the average annual wage of at least 50 of the New Jobs of at least \$50,963 is equal to the prevailing average annual wage in the Locality of \$50,963; (ii) the Locality is a high-unemployment locality, with an unemployment rate for 2014, which is the last year for which such data is available, of 6.4% as compared to the 2014 statewide unemployment rate of 5.2%; (iii) the Locality is a high-poverty locality, with a poverty rate for 2014, which is the last year for which such data is available, of 23.4% as compared to the 2014 statewide poverty rate of 11.8%; and (iv) the Company filed its application for the COF Grant prior to January 1, 2016.

Section 3. Disbursement of COF Grant.

By no later than June 1, 2016, the Locality will request the disbursement to it of the COF Grant. The COF Grant in the amount of \$5,000,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the COF Grant proceeds, the Locality will disburse the COF Grant proceeds to the Authority. Within 30 days of its receipt of the COF Grant proceeds, the Authority will disburse the COF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the COF Grant proceeds to pay a portion of the costs of the build-out of the Facility and, at the Company's discretion, for training, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$5,000,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	\$1,800,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as a matching grant or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Locality Performance Grant	\$5,000,000
Parking Subsidy	\$13,537,368

If, by the Performance Date, as extended in accordance with the terms herein, the funds disbursed, or committed to be disbursed, by the Locality to the Company in connection with the Locality Performance Grant, and realized by the Company through the Parking Subsidy (which is being provided by way of giving below market-rate parking to the owner of the Facility so that the savings may be passed through to the Company under the Lease) total less than \$5,000,000, thereby falling short of the COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company equal to the difference as of the Performance Date, so long as the Company has met its Targets.

The proceeds of the Locality Performance Grant may be used by the Company for any lawful purpose. The Parking Subsidy will be in the form of discounted parking rates and shall reflect cost savings to the Company and its employees.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facility and create and Maintain at least 15 New Jobs at the Facility having an average annual wage of at least \$43,089 in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). For purposes of repayment, the COF Grant is to be allocated as \$2,500,000 (50%) for the Company's Capital Investment Target and \$2,500,000 (50%) for its New Jobs Target. Further, the \$2,500,000 allocated to the New Jobs Target shall be allocated as \$1,250,000 for the 50 New Jobs required to have an average annual wage of at least \$50,693 and \$1,250,000 for the additional 1,750 New Jobs required to have an average annual wage of at least \$36,000. If the Company has met at least 90% of all of the Targets at the Performance Date (meaning that it has made Capital Investments of at least \$29,025,000, has created and Maintained at least 45 New Jobs paying an average annual wage of at least \$50,693, and has created and Maintained at least another 1,575 New Jobs paying an average annual wage of at least \$36,000), then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has not met at least 90% of any or all of its Targets at the Performance Date, the Company shall repay to the Authority that part of the COF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$25,800,000 (reflecting achievement of 80% of the Capital Investment Target), only 30 New Jobs paying an average annual wage of at least \$50,693 have been created and Maintained (reflecting achievement of 60% of that portion of the New Jobs Target), and only an additional 1,313 New Jobs paying an average annual wage of at least \$36,000 have been created and Maintained (reflecting achievement of 75% of that portion of the New Jobs Target), the Company shall repay to the Authority 20% of the moneys allocated to the Capital Investment Target (\$500,000), 40% of the moneys allocated to that portion of the New Jobs Target at the higher wage level (\$500,000) and 25% of the moneys allocated to that portion of the New Jobs Target at the lower wage level (\$312,500).

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine in good faith at any time prior to the Performance Date (a "Determination Date") that the Company is likely to vacate, close, or abandon the Facility and thus fall substantially short of its obligations to meet and Maintain its Targets by and through the Performance Date because of a significant event demonstrating its inability or unwillingness to meet and Maintain its Targets by and through the Performance Date (such as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the

Facility by the Company, or other similar significant event), and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire COF Grant to the Authority, provided however, that the Company shall be entitled to dispute any such determination pursuant to the Dispute process set forth in Section 8(f) of this Agreement.

(d) *Repayment Dates: Any such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.* Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at April 1, 2017 and covering the period through the prior December 31. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority or VEDP may request.

If requested by VEDP, the Company shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date.

Section 7. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, or (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective upon receipt. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Cassidy Turley, Inc.
d/b/a Cushman & Wakefield
Attention: ADP Lease Administration
721 Emerson Road, Suite 300
St. Louis, MO 63141

with a copy to:

ADP, LLC
One ADP Boulevard, MS 325
Roseland, NJ 07068
Attention: General Counsel

if to the Locality, to:

City of Norfolk, Virginia
Office of the City Manager
810 Union Street, 1001 City Hall Bldg.
Norfolk, Virginia 23510
Facsimile: 757-664-4239
Attention: City Manager

with a copy to:

City of Norfolk, Virginia
City Attorney's Office
810 Union Street, 910 City Hall Bldg.
Norfolk, Virginia 23510
Facsimile: 757-664-4201
Attention: City Attorney

if to the Authority, to:

Economic Development Authority of
the City of Norfolk
500 E. Main Street, Suite 1500
Norfolk, Virginia 23510
Facsimile: 757-441-2910
Email: jared.chalk@norfolk.gov
Attention: Secretary/Treasurer

with a copy to:

Kaufman & Canoles, P. C.
150 W. Main Street, Suite 2100
Norfolk, Virginia 23510
Facsimile: 888-360-9092
Email: glconsolvo@kaufcan.com
Attention: George L. Consolvo, Esq.

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: mbriley@yesvirginia.org
Attention: President and CEO

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP. Notwithstanding the foregoing, the Company shall have the right to assign its rights and obligations under this Agreement without any such consent provided it assigns its rights and obligations to (i) any affiliate of the Company, (ii) any corporation, joint venture, partnership or other entity which is a successor to the Company resulting from a merger or consolidation, or (iii) a purchaser of all or substantially all of the Company's assets; provided, in any such case, the Company gives notice of such assignment to the Locality, the Authority and VEDP and the assignee assumes all of the obligations of the Company under this Agreement. After such notice is given and such obligations have been assumed, the Locality, the Authority and VEDP may deal exclusively with the assignee.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Norfolk, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts (including electronic counterparts such as facsimile or pdf copies), each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.

(f) *Dispute Resolution:* In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (including disputes as to the

creation, validity, or interpretation of this Agreement) (a "Dispute"), then upon the written request of any party, each of the parties will appoint a designated senior executive whose task it will be to meet for the purpose of endeavoring to resolve the Dispute. For purposes of this Section 8(f), the designated senior executive for the City shall be the City Attorney, and the Company shall appoint an executive who is a Director-level executive or above. The designated executives will meet as often as the parties reasonably deem necessary in order to gather and furnish to the others all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. The specific format for such discussions will be left to the discretion of the executives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other parties. No formal proceedings for the resolution of the Dispute or demands for repayment of the COF Grant may be commenced until the earlier to occur of (a) a good faith mutual conclusion by the executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the 90th day after the initial request to negotiate the Dispute. If the resolution of the Dispute requires any party to take, or cause to be taken or to cease taking, some action, such party shall be provided a reasonable period of time, not to exceed ninety (90) days, to take, to cause, or to cease taking, such action. If the parties are unable to resolve the Dispute pursuant to the process set forth above, either party may seek to resolve the Dispute by filing an action in the jurisdiction and venue stipulated in Section 8(b) of this Agreement or by pursuing any other remedy available at law or in equity.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

ADP, LLC

By _____
Name: _____
Title: _____
Date: _____

CITY OF NORFOLK, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

ATTEST:

City Clerk

APPROVED AS TO CONTENTS:

Director, Department of Development

APPROVED AS TO FORM AND CORRECTNESS:

Assistant City Attorney

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
NORFOLK**

By _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO CONTENTS:

Executive Director, Economic Development
Authority of the City of Norfolk

APPROVED AS TO FORM AND CORRECTNESS:
